

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

VAN TUBBS,

Petitioner,

v.

CIVIL ACTION NO. 1:17CV227
(Judge Keeley)

JENNIFER SAAD, Warden,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 9]
AND DISMISSING WITH PREJUDICE THE PETITION FOR A WRIT OF
HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 [DKT. NO. 1]**

On December 29, 2017, the pro se petitioner, Van Tubbs ("Tubbs"), filed the pending Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Petition") (Dkt. No. 1), claiming that the Bureau of Prisons ("BOP") had failed properly to credit certain time he spent in state custody prior to being sentenced in federal court. Id. at 5. Pursuant to 28 U.S.C. § 636 and LR PL P 2, the Court referred the Petition to the Honorable Michael J. Alois, United States Magistrate Judge, for initial review. On February 22, 2018, the respondent moved to dismiss the Petition or, in the alternative, for summary judgment (Dkt. No. 6).

On June 19, 2018, Magistrate Judge Alois entered a Report and Recommendation ("R&R") recommending that the Court grant the respondent's motion (Dkt. No. 9). He reasoned that the BOP had properly calculated Tubbs's federal sentence by running it concurrent with his state sentence only from the date the federal sentence was imposed. Id. at 7-9. Moreover, inasmuch as the BOP did

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not miscalculate the sentence, Tubbs had no cognizable constitutional claim. Id. at 10. The R&R also informed Tubbs of his right to file "written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." It further warned that failure to do so would result in waiver of the right to appeal. Id. at 11. Although he received the R&R on June 25, 2018 (Dkt. No. 10), Tubbs has not filed any objections to the recommendation.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection is timely made. 28 U.S.C. § 636(b)(1)(C). On the other hand, "the Court may adopt, without explanation, any of the magistrate judge's recommendations to which the prisoner does not object." Dellacirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W.Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold those portions of a recommendation to which no objection has been made unless they are "clearly erroneous." See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Having received no objections to the R&R, the Court has no duty to conduct a de novo review of Magistrate Judge Alois'

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findings. Furthermore, following a review of the R&R and the record for clear error, the Court:

- 1) **ADOPTS** the R&R (Dkt. No. 9);
- 2) **GRANTS** the respondent's Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment (Dkt. No. 6);
- 3) **DENIES** the Petition (Dkt. No. 1); and
- 4) **DISMISSES** this case **WITH PREJUDICE**.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to enter a separate judgment order and to transmit copies of both Orders to counsel of record and to the pro se petitioner, certified mail and return receipt requested.

DATED: July 17, 2018.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE